Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 96-93

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In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

**REPLY COMMENTS OF UNITED UTILITIES, INC.
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING AND
ORDER ESTABLISHING JOINT BOARD
RELEASED March 8, 1996**

SUMMARY

United Utilities, Inc. (United) herein replies to the comments made by other parties, including AT&T and GCI, in the referenced Notice of Proposed Rulemaking and Order Establishing Joint Board. There are several issues that we request the Federal-State Joint Board consider carefully.

First, in regard to the issue of providing multiple carriers in the same service area access to federal universal service funds, United believes that the 1996 Telecommunications Act (hereinafter referred to as the Act) has reserved this policy decision to each individual state. We have suggested two approaches that could be taken jointly with the states to provide such access. The first approach would be an experimental program to allow multiple carriers access to federal universal service funds only in those LEC study areas that currently receive less than $5.00 per month in support. The second approach would be to provide a ten year transition period in those states and study areas where more than one eligible carrier has been designated to serve. A broad, nationwide policy providing multiple carriers in the same service area access to federal universal service funds would effectively preempt each state from fulfilling its obligations under the Act. Prior to taking high cost assistance away from existing LECs and making it available to other carriers, each state will need to determine whether this would be in the best interests of consumers, existing carriers, and competitors.

Second, ***all*** consumers, not just residential consumers as suggested by AT&T, should benefit from universal service.

Third, interexchange carriers should ***not***, as suggested by AT&T, be granted free use of subscriber loop plant.

Fourth interexchange carriers should have to set wholesale rates below retail rates using the same procedures that LECs are required to use.

Fifth, SMOU needs to be used to allocate switching costs in order to make USF explicit.

Sixth, DEM weighting factors need to be revised to better target universal service funding support.

Seventh, ***all*** technologies, including satellite technology, need to be able to compete.

MULTIPLE CARRIER ACCESS TO USF IS NOT REQUIRED BY THE ACT.
THE COMMISSION IS REQUIRED BY THE ACT
TO WORK WITH EACH INDIVIDUAL STATE.

In promoting the idea that multiple carriers have access to universal service funds, the underlying desire of the IXCs is that universal service funds be made available to them when they enter local markets:

> "...[A]ll subsidies must follow the customer, not the carrier, to ensure compliance with the nondiscrimination requirement of § 254 (b) (4) [of the Act] and to encourage new local entry." (AT&T Comments, page 9) [1]

> "GCI supports a system that uses credits or vouchers over a specified area payable to the customer's provider of choice." (GCI Comments, page 8)

The 1996 Telecommunications Act clearly reserves the designation of carriers that are eligible to receive USF to the states:

> "A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission." (Sec. 214 (e) of the Act)

Furthermore, only ***eligible*** carriers can receive federal universal service support:

> "[O]nly an eligible telecommunications carrier designated under section 214 (e) shall be eligible to receive specific Federal universal service support." (Sec. 254 (e) of the Act)

At this point, the Commission does not know to what extent, and if, multiple carriers will be designated as eligible carriers in the same service area. If a state does not designate multiple eligible carriers, then there would be no need to devise a program that would offer universal service support to more than one carrier.

Section 254 (b) (5) of the Act provides for "specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service." The Act does not provide an unlimited source of funds for carriers to construct duplicative and unnecessary facilities in high cost, rural areas. Some areas of the country require more universal service support than other areas. In fact,

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[1] AT&T has interpreted this section of the Act as being concerned with who has ***access*** to universal service funds when, in reality, the section addresses the issue of who will ***contribute*** to universal service funds.

some areas like those isolated locations that United serves require universal service support in order for there to be any service. The IXCs conveniently do not address the issue of spending universal service funds on duplicative facilities and services. Since the public is clearly not going to want to have to pay for this duplication, Congress has reserved to the individual states the responsibility of designating eligible carriers. It would be a violation of the Act to implement a universal service program that would provide multiple carriers in the same service area of a state access to a limited amount of federal universal service funds, without the approval of that state.

The Commission, however, may want to seek joint state participation in a program that would provide multiple carriers with access to universal service funds. United recommends that the Commission consider targeting such a program to those areas that have the strongest likelihood of sustaining competition (i.e., areas where customer demand may be sufficient enough to support competing facilities and services). Then, based upon a periodic review of the success or failure of this program, the Commission can proceed to determine jointly with each state, if, and how, the program should be continued.

One objective of such a program would be to encourage competition where competition is most likely to succeed and where competition can, ultimately, eliminate the need for any federal universal service funds. One suggestion would be to target the program in existing LEC study areas that now receive less than $5.00 per month in universal service fund support. These areas are more likely to be able to sustain competition since they are less costly and more attractive to competitors to serve. This program would also avoid disrupting both the quality and availability of service in higher cost areas until some evidence is available as to the desirability and usefulness of providing multiple carriers in those high cost service areas with access to universal service funds. In extremely high cost areas, it does not make sense to take universal service funds that the existing carrier now receives and force this carrier to share the funds with other carriers. This would discourage further investment in those areas and it would only provide a means for deep pocket carriers to drive existing carriers out of business.

Another approach to providing multiple carriers with access to universal service funds entails providing a ten year transition period for those study areas where a state has designated more than one eligible carrier. United provided recommendations for such a transition plan in its initial Comments (United Comments, pages 1 & 2).

Under Sec.253 of the Act, IXCs have the ability to construct facilities and deliver services anywhere. The Act does not give IXCs, or any other party, access to universal service funds until a state designates the carrier as an eligible carrier (once the new rules are adopted). The Commission should not adopt any of the IXCs' proposals that would provide access to federal universal service funds without first obtaining approval from each state where the Commission desires to provide the IXC with access to those funds. The Commission should also not create a universal service program that (1) provides incentives to duplicate facilities and services in high cost areas and thereby increases the cost of universal service; and (2) takes existing universal service funds and high cost assistance away from LECs serving customers in areas that clearly require the support in order for there to be any service.

ALL CONSUMERS, NOT JUST RESIDENTIAL CONSUMERS,
SHOULD BENEFIT FROM UNIVERSAL SERVICE

AT&T has taken the position that "the subsidy [universal service funds] should not apply to other than conventional residential services" (AT&T Comments, page 13). The Act clearly provides for ***all*** consumers (i.e., business and residential consumers) to have access to the telecommunications services that fall within the definition of universal service.

> "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."
> (Sec. 254 (b) (3) of the Act)

The Commission should not limit universal service funding support to residential consumers as AT&T has recommended. Besides creating an administrative nightmare (i.e., businesses obtaining service as residential consumers), this would be contrary to the Act.

INTEREXCHANGE CARRIERS SHOULD NOT BE GRANTED
FREE USE OF SUBSCRIBER LOOP PLANT

AT&T has also recommended that the subscriber line charge (SLC) be increased so that the charge fully recovers the subscriber loop portion of the interstate common line (AT&T Comments, page iii). What AT&T wants is free access to and free use of subscriber loop plant to originate and terminate interstate calls. There is no basis to require a LEC to provide its facilities to AT&T, or anyone else, for free.

INTEREXCHANGE CARRIERS SHOULD HAVE TO SET WHOLESALE RATES
BELOW RETAIL RATES USING THE SAME PROCEDURES
THAT LECS ARE REQUIRED TO USE

The competitive delivery of interexchange services is now being hampered by several factors:

- the ability of IXCs to charge wholesale rates that are greater than retail rates (AT&T Alascom's Alaska Intrastate Tariff)
- IXCs charging the same rate for both wholesale and retail services; and
- IXCs being able to use a methodology that is different than the methodology that LECs have to use in setting wholesale rates (Sec. 252 (d) (3) of the Act).

AT&T's position on interexchange carriers having access to universal service funds for the delivery of interexchange services is as follows:

> "[T]o the extent that telecommunications carriers, as a result of rate averaging and integration rules, provide interexchange services that are below cost either to low-income consumers or for calls to or from high costs areas, they should be permitted to recover from the NUSF the difference between the price charged to the end user and the TSLRIC." (AT&T Comments, page 12).

The Act encompasses interexchange services as well as local exchange services within the scope of those services that should be, if needed, supported by universal service funds (Sec. 254 of the Act). United supports interexchange carriers having access to universal service funds when this access is needed to ensure the delivery of interexchange services at affordable rates. However, interexchange carriers should also be required to set wholesale rates that are less than retail rates and to set them using the procedures that the Act requires LECs to use (Sec. 252 (d) (3) of the Act). Permitting IXCs to set wholesale rates above retail rates, or at retail rates, is discriminatory, anticompetitive, and patently unfair.

SMOU NEEDS TO BE USED TO ALLOCATE SWITCHING COSTS IN ORDER TO MAKE USF EXPLICIT. THE DEM WEIGHTING FACTORS NEED TO BE REVISED TO BETTER TARGET UNIVERSAL SERVICE FUNDING SUPPORT.

AT&T has said that "[t]o comply with the Act, on a going-forward basis, all universal service subsidies must be divorced from access charges ..." (AT&T Comments, page i). Currently, the DEM (Dial Equipment Minutes) factor is used to allocate Category 3 switching costs to the interstate jurisdiction. United's Comments (page 3) addressed the need to use SMOU (Switched Minutes of Use) as the allocator for switching costs since DEM incorrectly incorporates a double counting of intra office minutes. SMOU would be used as the allocator for assigning unsupported Category 3 switching costs to the interstate jurisdiction. Then, supported Category 3 switching costs (the amount eligible for universal service funds) would be determined by taking the difference between the interstate jurisdiction piece determined by applying the SMOU factor and the interstate jurisdiction piece determined by applying the weighted DEM. This would make the universal service support for Category 3 switching costs explicit and separate. The DEM weighting factors themselves should be changed to better target universal service funding support (as discussed in United's Comments on page 4).

ALL TECHNOLOGIES, INCLUDING SATELLITE TECHNOLOGY, NEED TO BE ABLE TO COMPETE

The Commission's position on technological neutrality is stated in the following:

"Efficient investment and operation requires that assistance be delivered on a basis that is technology-neutral, in order to avoid encouraging investment in specific types of facilities or technologies when other means could deliver local service at lower cost...The USF [rules] should not impede...development by other...technologies by subsidizing only one particular...technology."
(CC 80-286 NPRM Released July 13, 1995, pages 6 and 11)

This position is consistent with the Act. In Alaska, where the rugged terrain, small population base and vast expanses make it a unique market, it is especially important that satellite technology be allowed to compete to provide local exchange services. United is requesting that all technologies, including satellite technology, be allowed to compete to connect subscribers to a local exchange carrier's switch.[2]

CONCLUSION

The Commission needs to be careful in its implementation of the Act. The Act, with special provisions for rural and high cost areas, seeks to provide quality telecommunications services to ***all*** consumers. The Act promotes competition in the provision of these services. The Act, however, doesn't contemplate wasteful spending of universal service funds and smaller carriers being driven out of business with the result being less competition, poorer service, and higher rates. United has provided some useful recommendations and we look forward to being able to comment on the Federal-State Joint Board's recommendations prior to the Board finalizing the recommendations for submission to the Commission

Respectfully submitted,

Steve Hamlen
President

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[2] GCI had intervened in, and is now a party to, the appeal of an APUC decision (APUC Docket U-94-1) denying the use of DAMA satellite technology to serve four locations in Prince William Sound. By abusing the regulatory process, GCI was capable of preventing United from deploying DAMA satellite technology within the Alaskan market while it proceeds to deploy its own DAMA service in 50 Alaskan locations (APUC Docket U-95-38). Most of these locations have fewer than 100 customers and already receive telecommunications services via satellite. The Commission should disregard GCI's Comments (page 5) since their objective is to discourage the provision of universal service and to establish a barrier for other carriers to be able to deploy satellite technology that could compete with GCI.

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AFFIDAVIT OF SERVICE

I hereby certify that a copy of the

Reply Comments of United Utilities, Inc.
in Response to Notice of Proposed Rulemaking and
Order Establishing Joint Board
Released March 8, 1996

were mailed on May 2, 1996 to the persons indicated on the Federal-State Joint Board Service List and United Utilities, Inc.'s Courtesy List.

DATED this 2nd day of May 1996.

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BY: Bonnie J Scherer
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